IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10766 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMMED RAFIK MOHAMMED YUSUF SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR MHM SHAIKH for Petitioner

Mr.Uday Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 20/12/2000

ORAL JUDGEMENT

#. This petition is filed by the petitioner under Article 226 of the Constitution of India challenging his order of detention passed by the Police Commissioner, Ahmedabad City, Ahmedabad on 10.8.2000 in exercise of the

powers conferred upon him vide section 3(1) of the Gujarat Prevention of Anti social Activities Act 1985 (PASA Act for short). The petitioner came to be detained from 10.8.2000 in pursuance of the above said order.

#. The detaining authority considered the investigation and the complaint filed in 3 crimes registered against the petitioner under section 379 and 394 of the I.P.C. by which it was alleged that the petitioner committed theft of 2 Tata Sumo cars and in one case the petitioner indulged in committing theft of Rs. 3,86,340.000. The detaining authority considered the statements of 2 witnesses who on assurance of anonymity offered statements against the petitioner to the extent that the petitioner was indulging in activity of committing theft. From the above material the detaining authority came to the conclusion that The petitioner was involved in the offence of theft and was a hardened criminal and a head strong person. The detaining authority labelled the petitioner as a dangerous person within the meaning of section 2(c) of the PASA Act.

#. Learned advocate Mr. M.M.Shaikh for the petitioner and Mr. Uday Bhatt learned AGP for the respondents were heard.

#. Amongst the other grounds it was vehemently urged that the order of detention is required to be quashed and set aside on the ground that the detaining authority did not apply its mind qua the fact and qua the legal position of the case. It was urged that the petitioner was in judicial custody when the order came to be passed. It was urged that that the detaining authority wrongly considered the provisions of cancellation of bail.

#. From the grounds of detention it is clear the petitioner was in judicial custody when the order came to be passed against him. The petitioner was in custody in all the crimes registered against him. The petitioner was not capable of continuing his legal activities as alleged because he was in judicial custody. The detaining authority however failed to apply its mind qua the facts of this case in this respect. Further the detaining authority wrongly considered the provisions of section 437(5) Cr.P.C. The detaining authority also observed that the petitioner was likely to be released on bail and was likely to continue his illegal activities. The detaining authority also observed that the procedure for cancellation of bail is likely to consume more time and therefore, the same was not resorted to. Thus firstly without considering the fact that the petitioner

was in judicial custody, the detaining authority passed the order of detention which is non application of mind qua the facts of the case. Secondly the authority anticipated that the the petitioner was likely to be released on bail and was likely to continue his illegal activity. This is again non application of mind by the detaining authority because the detaining authority had ample opportunity to oppose the bail and get the same cancelled. Instead, the detaining authority simply brushed aside the the provisions of section 437(5) Cr.P.C. by merely saying that the same was likely to consume more time. In this respect therefore, non application of mind on the part of the detaining authority is obvious vitiating the order of detention. For the above reasons, the order passed by the detaining authority is required to be set side and quashed.

#. In the result, the order passed by the Police Commissioner, Ahmedabad City, Ahmedabad on 10.8.2000 passed against the petitioner under the PASA Act is ordered to be set aside and quashed. The petitioner-Mohammed Rafik Mohammed Yusuf Shaikh is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute. D.S.permitted.

(J.R.Vora.J)

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